IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5248 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARAS CEMENT & CHEMICALS INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5248 of 2002

MR DM THAKKAR for Petitioner No. 1

MR MENGDEY, AGP. for Respondents. No. 1-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 19/07/2002

ORAL JUDGEMENT

Rule. Mr.Mengdey, learned A.G.P. appears and waives service of rule on behalf of the respondents.

2. The petitioner, by way of this petition has

challenged the legality and validity of the order dated 16-05-2002 passed by the District Collector, Junagadh whereunder the Quarry Lease granted to the petitioner was cancelled and the security deposit forfeited.

3. Mr.D.M.Thakkar, learned advocate appearing on behalf of the petitioner contended that the show cause notice dated 17-05-2002 mentioned in the impugned order was never received and hence the petitioner had not been given opportunity of being heard. On 27-05-2002 this Court (Coram : D.P.Buch, J), after recording the aforesaid contention on behalf of the petitioner, directed issuance of notice subject to the condition that the petitioner shall pay the entire amount mentioned in the impugned order dated 16-05-2002 before 31-05-2002. It is an admitted position that the petitioner has accordingly made complete payment along with interest.

4. Mr.Mengdey, learned A.G.P. appearing on behalf of the respondents referred to and relied upon the affidavit-in-reply with special reference to the fact that show cause notice which was sent through Regd. A.D. was not returned back undelivered and that the petitioner had not informed the authority about the change of address.

5. As against this Mr.Thakkar has invited attention of the Court to the rejoinder affidavit and the communication dated 17-08-2000 annexed to the rejoinder affidavit whereby the petitioner had informed the respondents about the change of address.

6. In view of the fact that the petitioner had intimated the change of address to the respondents, and this is obvious from the endorsement available on the copy annexed with the rejoinder affidavit, the case of the petitioner that the petitioner was not served with the show cause notice stands established because admittedly, the show cause notice had been forwarded to the old address. In light of this situation it is apparent that the order is passed in violation of principles of natural justice. Furthermore, the reason which prompted the authority to pass the impugned order, namely, non-payment of royalty, rent, etc. does not survive because as directed by this Court the petitioner has already deposited the amount with the Registry of this Court on 31-05-2002.

7. The impugned order dated 17-05-2002 passed by the District Collector, Junagadh cancelling the Quarry Lease of the petitioner is hereby quashed and set aside. The

respondent - authorities are directed to renew the same subject to the condition that the petitioner shall make any other payment which may be lawfully due from the petitioner and provided the petitioner is otherwise entitled in law.

8. The petition is accordingly allowed. Rule is made absolute. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

m.m.bhatt